THE PUBLIC LAWYER

MARCH 1, 2004

Emerging Issues, Council of State Governments (February 2004). As 2004 kicks into gear, state officials are dealing with a variety of issues, ranging from shifts in the demographic structure of their states, changes in the economy, state-federal relations, and scientific and technological developments. Immigration is a major issue at the state level. The effects of demographic changes are felt in many policy areas, particularly in education. States will continue to feel the growing pains associated with universal access to quality education in several areas of school reform, particularly among limited English student populations. As test-based accountability dominates the public education agenda, the racial and ethnic achievement gap is a top concern for policy-makers as they seek ways to eliminate racial and ethnic imbalances that are increasing as some districts are becoming less integrated than they have been in the past.

States are also dealing with the effects of changing economic conditions. For the past few years, states have faced grim fiscal situations, partly due to a slow national economy. In the past two fiscal years, some states have started to look at tax increases to increase state revenues. In fact, there have been more tax increases in the past two years than any time since the recession of the early 1990s. While several states are considering "traditional" tax increases, some states are looking at tax modernization.

As the American economy has shifted from the manufacturing to the service sector, for instance, most state tax structures are still focused on durable goods rather than services. In Iowa, however, there is a proposal to extend the sales tax to engineering, consulting and accounting services.

State-federal relations are always on state policy-makers' radar screens. One trend of interest is the growing bipartisan resistance to the No Child Left Behind Act in statehouses. More and more state policymakers have indicated their concern that the law has overstepped its bounds, but it remains to be seen whether or not legislators will continue their resistance and actually reject federal funds in 2004. In Virginia, the state House issued a stern resolution calling for Congress to exempt

the state from U.S. Department of Education requirements for compliance with the act. In Utah, a legislator has filed a bill to refuse federal money for education and the federal guidelines that accompany the funds.

Federalism issues are also evident in environmental policy. A recent U.S. Supreme Court decision held that the U.S. Environmental Protection Agency has authority under the Clean Air Act to stop construction of a major air pollutant emitting facility permitted by a state authority when the EPA finds that the state's "best available control technology" determination is unreasonable. This ruling could have major implications for state permitting programs under the Clean Air Act.

Advancements in technology are often accompanied by downsides and, it appears, federalism issues. With the advent of e-mail, people have a fast, convenient and relatively inexpensive way to communicate with one another. However, more than half of all e-mail traffic is unwanted "spam." This has led 36 states to pass anti-spam legislation. The federal Can-Spam Act which took effect in January 2004 may preempt some of, if not all, the state anti-spam statutes. State proponents of strong anti-spam laws agree that a national law has the potential to be more effective than 50 states trying to individually regulate spam. The concern is that the "Can-Spam Act" weakens provisions that already exist.

States are dealing with several emerging issues in agriculture and rural affairs, education, environment, fiscal affairs, health, infrastructure, and public safety and justice. To give policy-makers and state officials an overview of the major issues on the horizon, some of these emerging trends are highlighted and analyzed in this report.

http://www.csg.org/CSG/Policy/trends/default.htm

NEVADA CASES

For Nevada cases, click at:
http://www.leg.state.nv.us/scd/OpinionListPage.cfm

Diaz v. Ferne, 120 Nev. Adv. Op. No. 12 (February 25, 2004). "The district court issued a permanent injunction prohibiting Raymond and Mary Jane Diaz from installing a manufactured home on their lot in the Calvada Valley subdivision. The Diaz family appeals. The principal issue on appeal is whether the subdivision's Conditions, Covenants and Restrictions (CC&Rs) prohibit installation of manufactured homes on lots designated for single-family residences. We conclude that the CC&Rs do not prohibit installation of manufactured homes on these lots. We, therefore, reverse the district court's order enjoining the Diaz family from installing a manufactured home on their property."

State of Nevada ex rel. Office of the Attorney General v. Nos Communications, Inc., 120 Nev. Adv. Op. No. 11 (February 25, 2004). "This appeal involves determination of the standards that govern the issuance of a preliminary injunction when a government agency seeks injunctive relief under a consumer protection statute. To obtain injunctive relief, the state or government agency must demonstrate a reasonable likelihood that the statutory conditions authorizing injunctive relief exist. No showing of irreparable injury or inadequate legal remedy is necessary. Although in this case the district court applied an incorrect standard in reviewing the request for injunctive relief, we affirm the district court order on other grounds."

Trustees of the Plumbers and Pipefitters Union Local 535 Health and Wlefare Plan v. Developers Surety and Indem. Co., 120 Nev. Adv. Op. No. 10 (February 17, 2004). "In Basic Refractories , we determined that a surety could not be ordered to pay attorney fees that, in addition to the judgment, exceeded the bond amount when those fees were incurred in a separate action between the secured entity and a third party. Here, the surety may be ordered to pay attorney fees even if a fees award, in conjunction with the judgment, would exceed the bond amount because the surety engaged in direct litigation over the bond. Therefore, we reverse the district court's order and remand this case for an attorney fees determination."

Chachas v. Miller, 120 Nev. Adv. Op. No. 9 (February 11, 2004). "We conclude that the district court erred because not only did Miller have to be legally domiciled in Ely one year prior to his election, he also must have actually resided in Ely for one year prior to being elected mayor. Because Miller did not actually reside in Ely for the required time period, we reverse the district court's order."

United Ins. Co. v. Chapman Indus., 120 Nev. Adv. Op. No. 8 (February 11, 2004). "In this appeal, we consider whether prejudgment interest should be calculated pursuant to a general interest statute, NRS 99.040, or a specific interest statute, NRS 92A.340, in a dissenting shareholder action that commenced before NRS 92A.340 was enacted. We conclude that NRS 92A.340 applies."

Thomas v. State, 120 Nev. Adv. Op. No. 7 (February 10, 2004). "In April 1996, appellant Marlo Thomas robbed a manager and killed two employees at a restaurant where he formerly worked. He was convicted of two counts of first-degree murder and four other felonies and received two sentences of death. Thomas appealed, and this court affirmed his conviction and sentence. He filed a post-conviction petition for a writ of habeas corpus, and the district court denied the petition. He appeals. We conclude that Thomas's counsel were ineffective in failing to object to an incorrect instruction on sentence commutation at the penalty phase of his trial and that a new penalty hearing is required."

Crowley v. State, 120 Nev. Adv. Op. No. 6 (January 30, 2004). "Appellant John Crowley contends that (1) sexual assault and lewdness with a minor are redundant convictions requiring a reversal of the lewdness conviction, (2) consecutive sentences for sexual assault and lewdness with a minor constitute cruel and unusual punishment, and (3) the district court improperly admitted a hearsay statement made by Crowley's wife. We agree with Crowley's contention that his sexual assault and lewdness with a minor convictions are redundant, but we find Crowley's other arguments inapposite. Therefore, we reverse the conviction for lewdness with a minor under fourteen and remand the case to the district court for a new sentencing in accordance with this opinion."

Beckwith v. State Farm Fire & Casualty Co., 120 Nev. Adv. Op. No. 5 (January 30, 2004). "In this appeal, we consider whether the intentional misconduct of an intoxicated insured is covered under a homeowner's personal third-party liability policy. We conclude that, regardless of the insured's intoxicated state, the act of striking another is intentional, that such an act is not a covered occurrence under the policy in question here, and that such incidents are subject to a properly drafted "intentional

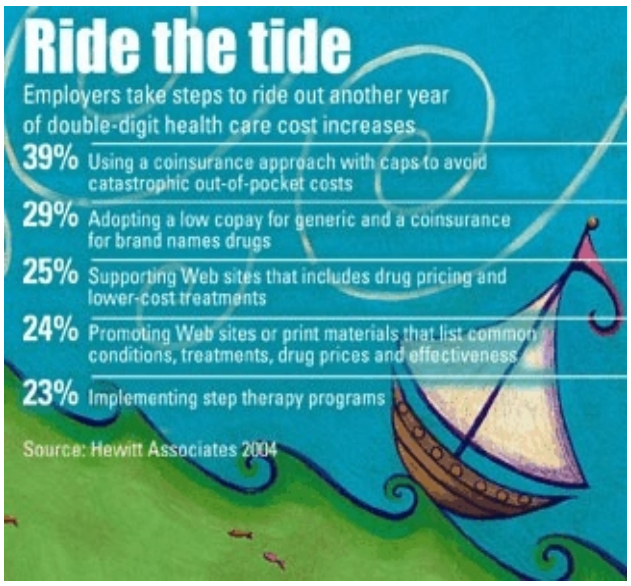
acts" exclusion clause. Consequently, we hold that the liability insurer in this instance is under no duty to defend or indemnify its insured in connection with an action seeking damages stemming from the insured's intentional infliction of bodily injury, even when the insured was intoxicated or believed he acted in self-defense."

State of Nevada ex rel. Dep't of Transp. v. Public Employees' Retirement Sys., 20 Nev. Adv. Op. No. 4 (January 30, 2004). "This is an appeal from a district court order granting a petition for writ of mandamus, directing the Nevada Department of Transportation (NDOT) to pay the Public Employees' Retirement System of Nevada (PERS) $345,284.62 for back employee and employer contributions plus interest on behalf of five archeologists whom NDOT treated as independent contractors instead of employees. We affirm the judgment of the district court."

Firestone v. State, 120 Nev. Adv. Op. No. 3 (January 30, 2004). "This appeal raises the issue of whether a defendant may be convicted of multiple counts of leaving the scene of an accident when there is more than one victim in a single accident. We conclude that NRS 484.219 allows only one charge of leaving the scene of a single accident, regardless of the number of victims. Therefore, we vacate two of Ronald Firestone's convictions for leaving the scene of an accident."

Aftercare of Clark County v. Justice Court, 120 Nev. Adv. Op. No. 2 (January 23, 2004). "In these consolidated appeals, we consider whether justices of the peace may deny jury trials to litigants who have filed a civil action in justice's court, rather than a small claims action, and seek less than $5,000. The Las Vegas Township Justice's Court has implemented a policy denying jury trials to litigants unless $5,000 or more is at stake. The district court declined to issue extraordinary relief compelling justice's court jury trials for the appellants, who are the defendants in two justice's court civil actions, both involving less than $5,000. Because we conclude that the justice's court's policy violates the Nevada constitutional guaranty of trial by jury, we reverse the district court's orders denying extraordinary relief, and we remand these matters to the district court for the issuance of writs of mandamus, compelling justice's court jury trials in these cases."

Maiola v. State, 120 Nev. Adv. Op. No. 1 (January 15, 2004). "The principal issue in this appeal is whether the district court has equitable jurisdiction to hear a motion for return of property under NRS 179.085 after there has been a completed administrative forfeiture proceeding. We conclude that it does."



Emerging Issues, Council of State Governments (February 2004). ROAD SAFETY MEASURES. States have intensified their efforts to get dangerous drivers off the road, and 2004 shows signs of continuing the trend. Whether it is older motorists, drunken drivers, teen drivers or drivers distracted by the use of cell phones or other "gadgets" in the car, states are taking steps to reduce the amount of accidents and fatalities resulting from these factors. In many instances, the statistics point to the need for states to take this approach.

For instance, according to a recent report by the National Highway Traffic Safety Administration, alcohol related traffic death rates increased or held steady in 19 states between 1998 and 2002. This suggests that efforts to curb drunken driving have reached a plateau. The states with the highest numbers of alcohol-related deaths per miles traveled were Louisiana, South Dakota, Nevada, South Carolina and Montana. And, South Carolina saw the greatest increase in its death rate during the four-year period, followed by Kansas, South Dakota, Rhode Island and Wisconsin.

- Virginia is an example of a state that is responding to these numbers. With 27,000 DUI cases in the state in 2002 alone, lawmakers have realized the need to address the issue and have drafted more than 70 bills to strengthen the commonwealth's DUI laws. The proposals range from mandatory three-day sentences for first-time offenders to tougher penalties for repeat offenders.

In addition to DUI measures, states are making efforts to curb other dangerous drivers. Oregon has seen nearly 300 people lose their licenses under a new law that requires doctors to notify the state of medical problems that make their patients unfit to operate a vehicle. Florida has begun requiring drivers over the age of 80 to get their vision checked before being able to renew their licenses. New Jersey has implemented a law that allows prosecutors to charge drivers with vehicular homicide if they are involved in a fatal accident as a

result of being drowsy or sleep-deprived. **http://www.csg.org/CSG/Policy/trends/default.htm**

The Council of State Governments, in cooperation with the Office of Juvenile Justice and Delinquency Prevention, is currently supervising the introduction of The Interstate Compact for Juveniles. At issue are the management, monitoring, supervision and return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control to states other than where they were sentenced. Also at issue is the safe return of juveniles who have run away from home and in doing so have left their state of residence.

The Interstate Compact on Juveniles, as currently written and/or utilized, is not an effective instrument for use by the juvenile justice system. Its language and methods are antiquated, its rules and procedures are not widely followed or understood and its structure and overall management is powerless to meet the real needs of juveniles within the modern justice system. Not all states maintain identical contextual language, and rules of the current compact are problematic and potentially detrimental to juveniles themselves.

These concerns, raised by both the public and corrections practitioners, have allowed CSG to take a lead role in amending the existing Interstate Compact. CSG is committed to ensuring that it remains an effective management tool for those juveniles who travel to, or are supervised in, states other than where they were sentenced or reside.

Primary changes to the original Juvenile Compact (1955) include:

- The establishment of an independent compact operating authority to administer ongoing compact activity, including a provision for staff support.
- Gubernatorial appointment representations of all member states on a national governing commission which meets annually to elect the compact operating authority members, and to attend to general business and rule making procedures.
- Rule making authority, provision for significant sanctions to support essential compact operations.
- Mandatory funding mechanism sufficient to support essential compact operations (staffing, data collection, training/education, etc.)
- Compel collection of standardized information.

http://www.csg.org/CSG/Policy/public+safety+and+justice/interstate+compact+for+juveniles/default.htm

NINTH CIRCUIT CASES

United States v. Alvarez , No. 01-10686 (9th Cir. February 25, 2004). “For the foregoing reasons, Francisco Javier Alvarez’s conviction is VACATED and his case REMANDED for an in camera inspection of the probation files of the three coconspirator witnesses as they existed at the time of Alvarez’s initial discovery request. If the district court determines that the files contained relevant, material, and probative information relating to the credibility of those witnesses, or other Brady or Jencks material that was not disclosed to the defense and that could have affected the outcome of the trial, then the district court

must direct the probation office to release the
materials and order a new trial. Appellant Valenzuela's conviction and sentence are AFFIRMED."

United states v. Clough, No. 02-30316 (9th Cir. February 25, 2004). "Defendant Kelly M. Clough appeals his conviction and sentence for unlawful possession of an unregistered firearm in violation of 26 U.S.C. § 5861(d). Clough argues that the district court erred when it refused to compel the United States to fulfill an alleged promise to forego bringing federal firearms charges after Clough dealt with state charges arising from the same incident. In addition, Clough contends that the district court erred in concluding that it did not have the discretion to consider whether a downward departure was warranted on the basis that Clough suffered significant injuries when police shot him. Because we conclude that the United States and Clough never agreed on the terms of the agreement, we affirm the conviction. We hold, however, that the district court did have discretion to consider whether a downward departure was warranted and thus remand this case for resentencing."

Farrakhan v. Staate of Washington, No. 01-35032 (9th Cir. February 24, 2004) (Kozinski, J,, dissenting). "This is a dark day for the Voting Rights Act. In adopting a constitutionally questionable interpretation of the Act, the panel lays the groundwork for the dismantling of the most important piece of civil rights legislation since Reconstruction. The panel also misinterprets the evidence, flouts our voting rights precedent and tramples settled circuit law pertaining to summary judgment, all in an effort to give felons the right to vote. The court should have taken this case en banc and brought order back into our caselaw. I dissent from the court's failure to do so."

Cox v. Boxer, No. 00-35887 (9th Cir. February 20, 2004). "Adoption of the Eleventh Circuit's rationale, as articulated in Buxton, is consistent with our precedent. We now hold explicitly that placement of the stigmatizing information in Cox's personnel file, in the face of a state statute mandating release upon request, constituted publication sufficient to trigger Cox's liberty interest under the Fourteenth Amendment. The lack of an opportunity for a name-clearing hearing violated his due process rights."

Orff v. United States, No. 00-16922 (9th Cir. February 18, 2004). "This appeal poses the issue of whether sovereign immunity bars individual landowners and water users of the Westlands Water District from suing the United States for allegedly having violated a contract the United States entered into with Westlands for the delivery of water. The district court originally concluded that sovereign immunity had been waived and proceeded to rule on the merits of the farmers' claims. The court then changed its mind on reconsideration, ruling that sovereign immunity barred the farmers' claims. We affirm that ruling. We agree with the district court that sovereign immunity deprived it of jurisdiction to hear the farmers' claims. Because the district court lacked jurisdiction to entertain those claims, we vacate the district court's rulings on the merits of those claims."

Powell v. Lambert, No. 01-35809 (9th Cir. February 10, 2004). "Jerome Powell appeals the district court's denial of his petition for habeas corpus brought under 28 U.S.C. § 2254. The district court held that it could not consider Powell's claims because they had not been exhausted in state court because of

an 'independent and adequate' procedural bar in that court. Powell contends on appeal that the state procedural bar is not adequate because it was not 'clear, consistently applied, and well-established at the time of [his] purported default.' Wells v. Maass, 28 F.3d 1005, 1010 (9th Cir. 1994). Among other things, the State contends that we should look only to the published opinions of its courts to determine whether a state procedural rule is 'clear, consistently applied, and well-established.' We disagree. The Supreme Court has held that state courts must follow a 'firmly established and regularly followed state practice' in order for an asserted procedural bar to be adequate. We understand the Court's use of the word '"practice' to refer to the state courts' actual practice, not merely to the practice found in their published opinions. After examining both published and unpublished decisions of the Washington state courts, we conclude that the Washington courts did not have, in actual practice, a 'clear, consistently applied, and well-established rule' at the time of Powell's purported default. We therefore hold that the asserted state court procedural bar is not adequate and that Powell has exhausted his federal claims in state court."

Krystal Energy Co. v. Navajo Nation, No. 02-17047 (9th Cir. February 10, 2004). "Appellant Krystal Energy Company appeals the district court's dismissal of its adversary action under the Bankruptcy Code, 11 U.S.C. §§ 505 and 542, against the Navajo Nation, an Indian tribe. The district court based its dismissal on the Navajo Nation's sovereign immunity to suit in the absence of explicit abrogation of that immunity by Congress. Whether Congress has abrogated the sovereign immunity of Indian tribes by statute is a question of statutory interpretation and is reviewed de novo. Because we conclude that Congress did abrogate the sovereign immunity of Indian tribes under 11 U.S.C. §§ 106(a) and 101(27), we reverse."

State of California v. Neville Chemical Co., No. 02-56506 ((th Cir. February 10, 2004). "The provision we grapple with today appears at first blush to be no exception. But as one works one's way through the statute as a whole, a fairly definite answer emerges. As will appear, we conclude that the limitations period for bringing an initial suit for recovery of remedial action costs under CERCLA cannot accrue until after the final adoption of the remedial action plan required by the statute."

Hemp Indus. Ass'n v. Drug Enforcement Administration, No. 03-71366 (9th Cir. February 6, 2004). "The DEA's Final Rules purport to regulate foodstuffs containing 'natural and synthetic THC.' And so they can: in keeping with the definitions of drugs controlled under Schedule I of the CSA, the Final Rules can regulate foodstuffs containing natural THC if it is contained within marijuana, and can regulate synthetic THC of any kind. But they cannot regulate naturally-occurring THC not contained within or derived from marijuana—i.e., non-psychoactive hemp products—because non-psychoactive hemp is not included in Schedule I. The DEA has no authority to regulate drugs that are not scheduled, and it has not followed procedures required to schedule a substance."

Bonnichsen v. United States, No. 02-35994 (9th Cir. February 4, 2004). "Considered as a whole, the administrative record might permit the Secretary to conclude reasonably that the Tribal Claimants' ancestors have lived in the region for a very long time. However, because Kennewick Man's remains are so old and the information about

his era is so limited, the record does not permit the Secretary to conclude reasonably that Kennewick Man shares special and significant genetic or cultural features with presently existing indigenous tribes, people, or cultures. We thus hold that Kennewick Man's remains are not Native American human remains within the meaning of NAGPRA and that NAGPRA does not apply to them. Studies of the Kennewick Man's remains by Plaintiffs scientists may proceed pursuant to ARPA."

In Re: Ellis, No. 01-70724 (9th Cir. February 4, 2004). "We write en banc to clarify that the acceptance of a criminal defendant's guilty plea is a judicial act distinct from the acceptance of the plea agreement itself. Once the district court accepts a guilty plea, the conditions under which the plea may be withdrawn are governed exclusively by Rule 11 of the Federal Rules of Criminal Procedure.1 Where a district court accepts a plea of guilty pursuant to a plea agreement, defers acceptance of the agreement itself, and later rejects the terms of the plea agreement, it must, according to the plain language of Rule 11, 'give the defendant an opportunity to withdraw the plea.' Fed. R. Crim. P. 11(c)(5)(B). Because Rule 11 contains no provision permitting the district court itself to determine that the plea should be vacated following its rejection of the plea agreement, the district court's choice to do so here was error. We therefore issue the writ of mandamus."

Sanders v. LaMarque, No. 02-56893 (9th Cir. February 3, 2004). "Under the circumstances presented here, the trial court committed constitutional error when, after learning that the juror was unpersuaded by the government's case, it dismissed the lone holdout juror. The trial court's justification was founded on the prosecutor's representation that he would have exercised a peremptory challenge to disqualify the juror if he had known of the additional material disclosed during the in camera juror examination. Specifically, the Court stated: 'the reason that I excused the juror was I felt that she had failed to disclose significant information during voir dire and that the prosecution was deprived of pertinent information in making their peremptory challenges.' A trial court, however, may not remove a juror to accommodate the prosecution's desire to exercise a peremptory challenge after a jury has been impaneled.

United States v. Joyce, No. 02-30423 (9th Cir. February 3, 2004). "Brian Francis Joyce seeks to challenge on First Amendment grounds the Internet access and computer use restrictions imposed as special conditions of supervised release following his conviction for possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). The government argues that Joyce waived his right to appeal these conditions by signing a plea agreement that contained an express waiver of appellate rights under 18 U.S.C. § 3742(a). We conclude that Joyce validly waived his right to bring this appeal, and we dismiss it for lack of jurisdiction."

OTHER CASES

Moran v. Clarke, No. 03-2055 (8th Cir. February 26, 2004). In a civil rights action originally stemming from a police brutality incident, the district court properly denied police board defendants' motion for summary judgment on the basis of qualified immunity. It was clearly established at all relevant times that manufacturing evidence and conspiring to wrongfully prosecute

plaintiff would amount to a substantive due process violation.
http://caselaw.lp.findlaw.com/data2/circs/8th/032055p.pdf

In re Williams, No. 04-3014 (6th Cir. February 26, 2004). Death row inmate's section 1983 challenge to Ohio's method of administering lethal injections is treated as a second habeas petition. Because it fails to meet the requirements for a second petition, permission to file it is denied.
http://laws.findlaw.com/6th/04a0058p.html

Muhammad v. Close, No. 02-9065 (U.S.S.C. February 25, 2004). Court of Appeal's dismissal of prisoner's section 1983 action is reversed where the rule in Heck v. Humphrey, 512 U. S. 477 (1994), which requires prisoners to resort to state litigation and federal habeas before section 1983, does not apply here.
http://laws.lp.findlaw.com/us/000/02-9065.html

Fullmer v. Michigan Dep't of State Police, No. 02-1731(6th Cir. February 25, 2004). The Michigan Public Sex Offender Registry does not constitute an unconstitutional denial of due process. It is clear to anyone accessing the registry that all sex offenders convicted after a certain date are listed, without exception.

http://laws.lp.findlaw.com/6th/04a0057p.html

Flowers v. Fiore, No. 03-1170, 03-1533 (1st Cir. February 25, 2004). Summary judgment was properly granted to defendants on constitutional and state law claims arising out of plaintiff's stop and detention by police. Though it is a close case, the stop and detention did not go beyond the boundaries of an investigatory Terry stop; the officers possessed sufficient and reasonable suspicion to stop plaintiff and acted reasonably throughout the course of the detention.

http://laws.lp.findlaw.com/1st/031170.html

Roh v. Ramirez, No. 02-811 (U.S.S.C. February 24, 2004). The search of plaintiffs' ranch was clearly unreasonable under the Fourth Amendment. The warrant was plainly invalid, failing to describe with particularity the items to be seized; because it did not describe these items at all, the search was presumptively unreasonable; defendant, who prepared and executed the warrant, is not entitled to qualified immunity because no reasonable officer could believe such a warrant to be valid.

http://laws.lp.findlaw.com/us/000/02-811.html

Banks v. Dretke, No. 02-8286 (U.S.S.C. February 24, 2004). When police or prosecutors conceal significant exculpatory or impeaching material in the State's possession, e.g., by withholding evidence that would have allowed a defendant to discredit essential prosecution witnesses, it is ordinarily incumbent on the State to set the record straight. The Fifth Circuit erred in dismissing death row inmate's Brady claim with respect to one such witness, and in denying him a certificate of appealability with respect to another.

http://laws.findlaw.com/us/000/02-8286.html

United States v. Lee, No. 01-1629 (3d Cir. February 20, 2004). Defendant's convictions and sentence, stemming from his receipt of bribes while president of the International Boxing Federation, are affirmed. Monitoring and recording of meetings in his hotel suite

with the consent of a participant did not violate his Fourth Amendment rights; there is no constitutionally relevant distinction between audio and video surveillance in this context.

http://caselaw.lp.findlaw.com/data2/circs/3rd/011629p.pdf

In the Matter of Alijah C., 3 (N.Y. February 19, 2004). A deceased child may be the subject of an abuse petition. The Legislature clearly intended to bring deceased children within the ambit of the Family Court Act to protect the health and safety of children whose siblings have died at the hands of a parent or caretaker. A deceased child can be the subject of an abuse petition.

http://caselaw.lp.findlaw.com/data/ny/cases/app/3opn04.pdf

Wirsching v. State of Colorado, No. 00-1437 (10th Cir. February 19 , 2004). There is no merit to prisoner's claims that prison officials violated his constitutional rights by directing him to participate in a sexual offender treatment program requiring him to admit to his offense, or by imposing adverse consequences, including the denial of visitation with his minor child, when he refused to participate.

http://laws.findlaw.com/10th/001437.html

HEALTH CARE TAX

In a recent QuickPoll conducted by BenefitNews.com, an overwhelming 96% of respondents say that the General Accounting Office's recent proposal to impose a tax on employer-paid health insurance simply cannot work and wondered what the GAO was thinking. Just 4% took the view that it can't hurt in an attempt to reduce costs. The survey included over 250 responses.

www.benefitnews.com

Today's Word:
Chthonic *(Adjective)*

Pronunciation: ['thah-nik]

Definition 1: Dwelling in or under the earth.

Usage 1: This is the only English word with a silent "c" and "h". However, they return if the word is prefixed, e.g. "The Ainu are the autochthonous people of Japan." Autochthonous [a-'tahk-thah-nês] (or "autochthonic") means "aboriginal, native to the soil, indigenous" but suggesting rights as old as the land.

Today's Word:
Blandiloquent *(Adjective)*

Pronunciation: [blæn-'di-lê-qwênt]

Definition 1: Smooth-talking, honey-tongued; flattering.

Usage 1: Today's word is another tottering on the brink of extinction—most dictionaries have already given up on it. The Oxford English Dictionary has retained the noun, "blandiloquence," and an adjectival cousin, "blandiloquous." We need to retain this word, however, if for no other reason than it sounds better than "smooth-talking."

Today's Word:
Jackanapes *(Noun)*

Pronunciation: ['jæ-kê-neyps]

Definition 1: (1) A domesticated ape or monkey; (2) an annoying child; (3) an impudent fellow.